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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,746	01/22/2004	Robert C. Meier	14420US02	5595
23446	7590	12/22/2004	EXAMINER	
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			ZIMMERMAN, BRIAN A	
			ART UNIT	PAPER NUMBER
			2635	

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,746

Applicant(s)

MEIER, ROBERT C.

Examiner

Brian A Zimmerman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,22,25,27-34 and 36-40 is/are rejected.
- 7) ☒ Claim(s) 23,24 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/21/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The disclosure is objected to because of the following informalities: the status of the applications mentioned in paragraphs 1-7 and 35 need to updated.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21,30-33,34,37-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-10,14,15 of U.S. Patent No. 6714559. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are broader and thus encompass the claims pending in this application.

The claims correspond according to the following table:

Application 10/762746	Patent 6714559
21	6
30	7

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31	8
32	9
33	10
34	16
Application 10/762746	Patent 6714559
37	7
38	8
39	14
40	15

Claims 21,22,32,33,34,39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,15,16 and 21 of U.S. Patent No. 5673031. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims are broader and thus encompass the claims pending in this application. .

The claims correspond according to the following table:

Application 10/762746	Patent 5673031
21	21
22	1
32	15
33	16
34	21
39	21

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the

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applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

1. Claims 21,22,25,31,32,33,34,38,39 and 40 are rejected under 35

U.S.C. 102(e) as anticipated by Kamerman.

Kamerman shows a method of beginning a data exchange over a wireless communication channel, see col. 3 lines 26+. Kamerman shows waiting a first period of time and detecting activity on the channel see col. 5 lines 15+ and col. 11 lines 10+. When no activity has been detected during the first time period, the sending device attempts to initiate communication, col. 4 lines 57+. Kamerman shows sending CTS and RTS signals between the devices in an appropriate manner consistent with 802.3 standards and therefore teach these packets occurring within a second time period. The first period is 56 microseconds plus a random period that is an even multiple of 40 additional microseconds, while the second interframe period is 16 microseconds, see col. 10 lines 12+ and col. 11 lines 10+.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 21,22,25,27-29,31,32,33,34,36,38,39 and 40 rejected under 35 U.S.C. 103(a) as being unpatentable over Kamerman (5164942) as applied to claims 21,22,25,31,32,33,34,38,39 and 40 above, and further in view of the common techniques in the art at the time of the invention.


As an alternative interpretation of the claims discussed above, it is well held that 802.3 Ethernet uses acknowledgement packets from the destination station to the sending station to acknowledge the received packet. It is also well held that if the sending station does not receive these ACK packets within a second time period it schedules to resend the "assumed" lost packet. Therefore, the use of ACK signals in 802.3 Ethernet also reads on the claimed limitation and the use of ACK signals for positive acknowledgement is commonly used as one of the known alternatives in 802.3 Ethernet and therefore would have been an obvious alternative acknowledgement scheme to use in the Kamerman system since Kamerman specifically discusses the use of common 802.3 Ethernet protocols in their wireless system, see col. 4 lines 42+. Regarding the limitations to the length of the packets, it is also well held that 802.3 Ethernet packets have a maximum predetermined length (512 bits) as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 571-272-3059. The examiner can normally be reached on Off every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 571-272-3068. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian A Zimmerman
Primary Examiner
Art Unit 2635

BAZ

MICHAEL HORABIK
SUPERVISORY PATENT EXAMINER
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